

REMARKS

Applicants respectfully note that an Office Action asserting a rejection based upon a statutory requirement for patentability was previously mailed on November 19, 2001 in the instant application. Because that Action appeared to consider all the claims on the merits, Applicants believe that no serious burden of search now remains to support the instant Restriction Requirement. Accordingly, the Requirement appears to be inadequately supported and may be withdrawn on that basis.

The Restriction Requirement sets forth two Groups asserted as being independent and patentably distinct. Applicants respectfully traverse because the subject matter of claims 16-26 (Group I) are related to the subject matter of claims 29 and 30 (part of Group II) as a subcombination to a combination. This follows because claims 16-26 are directed to compounds while claims 29 and 30 are directed to compositions comprising the compounds of claims 16 and 25, respectively, and a pharmaceutically acceptable excipient. Therefore, claims 29 and 30 are directed to a combination of the compounds of the Group I subcombination.

As set forth at MPEP 806.05 through 806.05(d), two way distinctness must be shown for a proper restriction between a subcombination (the compounds of claims 16-26) and a combination (the compounds of claims 29 and 30). No such showing has been made in the instant case, and so no restriction is proper. Applicants thus respectfully submit that because no basis for the restriction between claims 16-26 and claims 29-30 exist, the Restriction Requirement may be properly modified to recombine claims 29-30 in Group I.

In light of the above, Applicants respectfully submit that the restriction between claims 16-26 of Group I and claims 29-30 in Group II lacks proper support and may be properly withdrawn.

Applicants also note that claims 27 and 28 of Group II are directed to methods of using the compounds of claims 16 and 25, respectively, of Group I. Claims 27 and 28 are thus subject to the rejoinder rules as set forth at MPEP 821.04 if Group I is found to be allowable.

In the event that the instant Restriction Requirement is maintained despite the above discussion, Applicants hereby elect Group I, claims 16-26 with traverse for the reasons presented above.

Applicants expressly reserve the right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicants request examination of the elected subject matter on the merits.

The Examiner is invited to contact the undersigned in the event further discussions may be helpful in addressing any residual Restriction issues.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this

document to **Deposit Account No. 03-1952** referencing 273012011200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: August 2, 2002

Respectfully submitted,

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